

§ 1131.8

§ 1131.8 Nonpool plant.

See § 1000.8.

§ 1131.9 Handler.

See § 1000.9.

§ 1131.10 Producer-handler.

Producer-handler means a person who operates a dairy farm and a distributing plant from which there is route distribution within the marketing area during the month not to exceed 3 million pounds and who the market administrator has designated a producer-handler after determining that all of the requirements of this section have been met.

(a) *Requirements for designation.* Designation of any person as a producer-handler by the market administrator shall be contingent upon meeting the conditions set forth in paragraphs (a)(1) through (5) of this section. Following the cancellation of a previous producer-handler designation, a person seeking to have their producer-handler designation reinstated must demonstrate that these conditions have been met for the preceding month.

(1) The care and management of the dairy animals and the other resources and facilities designated in paragraph (b)(1) of this section necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) are under the complete and exclusive control, ownership and management of the producer-handler and are operated as the producer-handler's own enterprise and its own risk.

(2) The plant operation designated in paragraph (b)(2) of this section at which the producer-handler processes and packages, and from which it distributes, its own milk production is under the complete and exclusive control, ownership and management of the producer-handler and is operated as the producer-handler's own enterprise and at its sole risk.

(3) The producer-handler neither receives at its designated milk production resources and facilities nor receives, handles, processes, or distributes at or through any of its designated milk handling, processing, or distributing resources and facilities other source milk products for reconstitution

7 CFR Ch. X (1-1-07 Edition)

into fluid milk products or fluid milk products derived from any source other than:

(i) Its designated milk production resources and facilities (own farm production);

(ii) Pool handlers and plants regulated under any Federal order within the limitation specified in paragraph (c)(2) of this section; or

(iii) Nonfat milk solids which are used to fortify fluid milk products.

(4) The producer-handler is neither directly nor indirectly associated with the business control or management of, nor has a financial interest in, another handler's operation; nor is any other handler so associated with the producer-handler's operation.

(5) No milk produced by the herd(s) or on the farm(s) that supply milk to the producer-handler's plant operation is:

(i) Subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing program under the authority of a State government maintaining marketwide pooling of returns, or

(ii) Marketed in any part as Class I milk to the non-pool distributing plant of any other handler.

(6) The producer-handler does not distribute fluid milk products to a wholesale customer who is served by a plant described in § 1131.7(a), (b), or (e), or a handler described in § 1000.8(c) that supplied the same product in the same-sized package with a similar label to a wholesale customer during the month.

(b) *Designation of resources and facilities.* Designation of a person as a producer-handler shall include the determination of what shall constitute milk production, handling, processing, and distribution resources and facilities, all of which shall be considered an integrated operation, under the sole and exclusive ownership of the producer-handler.

(1) Milk production resources and facilities shall include all resources and facilities (milking herd(s), buildings housing such herd(s), and the land on which such buildings are located) used for the production of milk which are solely owned, operated, and which the producer-handler has designated as a source of milk supply for the producer-

handler's plant operation. However, for purposes of this paragraph, any such milk production resources and facilities which do not constitute an actual or potential source of milk supply for the producer-handler's operation shall not be considered a part of the producer-handler's milk production resources and facilities.

(2) Milk handling, processing, and distribution resources and facilities shall include all resources and facilities (including store outlets) used for handling, processing, and distributing fluid milk products which are solely owned by, and directly operated or controlled by the producer-handler or in which the producer-handler in any way has an interest, including any contractual arrangement, or over which the producer-handler directly or indirectly exercises any degree of management control.

(3) All designations shall remain in effect until canceled pursuant to paragraph (c) of this section.

(c) *Cancellation.* The designation as a producer-handler shall be canceled upon determination by the market administrator that any of the requirements of paragraph (a)(1) through (5) of this section are not continuing to be met, or under any of the conditions described in paragraphs (c)(1), (2) or (3) of this section. Cancellation of a producer-handler's status pursuant to this paragraph shall be effective on the first day of the month following the month in which the requirements were not met or the conditions for cancellation occurred.

(1) Milk from the milk production resources and facilities of the producer-handler, designated in paragraph (b)(1) of this section, is delivered in the name of another person as producer milk to another handler.

(2) The producer-handler handles fluid milk products derived from sources other than the milk production facilities and resources designated in paragraph (b)(1) of this section, except that it may receive at its plant, or acquire for route disposition, fluid milk products from fully regulated plants and handlers under any Federal order if such receipts do not exceed 150,000 pounds monthly. This limitation shall not apply if the producer-handler's

own-farm production is less than 150,000 pounds during the month.

(3) Milk from the milk production resources and facilities of the producer-handler is subject to inclusion and participation in a marketwide equalization pool under a milk classification and pricing plan operating under the authority of a State government.

(d) *Public announcement.* The market administrator shall publicly announce:

(1) The name, plant location(s), and farm location(s) of persons designated as producer-handlers;

(2) The names of those persons whose designations have been cancelled; and

(3) The effective dates of producer-handler status or loss of producer-handler status for each. Such announcements shall be controlling with respect to the accounting at plants of other handlers for fluid milk products received from any producer-handler.

(e) *Burden of establishing and maintaining producer-handler status.* The burden rests upon the handler who is designated as a producer-handler to establish through records required pursuant to § 1000.27 that the requirements set forth in paragraph (a) of this section have been and are continuing to be met, and that the conditions set forth in paragraph (c) of this section for cancellation of the designation do not exist.

(f) Any producer-handler with Class I route dispositions and/or transfers of packaged fluid milk products in the marketing area described in § 1131.2 shall be subject to payments into the Order 1131 producer settlement fund on such dispositions pursuant to § 1000.76(a) and payments into the Order 1131 administrative fund provided such dispositions are less than three million pounds in the current month and such producer-handler had total Class I route dispositions and/or transfers of packaged fluid milk products from own farm production of three million pounds or more the previous month. If the producer-handler has Class I route dispositions and/or transfers of packaged fluid milk products into the marketing area described in § 1131.2 of three million pounds or more during the current month, such producer-handler

§ 1131.11

shall be subject to the provisions described in § 1131.7 or § 1000.76(a).

[71 FR 9433, Feb. 24, 2006, as amended at 71 FR 25502, May 1, 2006]

§ 1131.11 [Reserved]

§ 1131.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1131.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1131.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I;

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order; and

(5) A dairy farmer whose milk is received at a pool plant if during the month milk from the same farm is received at a nonpool plant (except a nonpool plant that has no utilization of milk products in any class other than Class III or Class IV) other than as producer milk under the order in this part or some other Federal order. Such a dairy farmer shall be known as a *dairy farmer for other markets*.

§ 1131.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components

7 CFR Ch. X (1–1–07 Edition)

of skim milk) and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a cooperative association described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion unless at least one day's production of such dairy farmer is physically received at a pool plant during the month;

(2) The total quantity of milk diverted by a handler in any month shall not exceed 50 percent of the total producer milk caused by the handler to be received at pool plants and diverted;

(3) Diverted milk shall be priced at the location of the plant to which diverted;

(4) Any milk diverted in excess of the limits prescribed in paragraph (d)(2) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that are not to be producer milk, no milk diverted by the handler or cooperative association during the month to a nonpool plant shall be producer milk. In the event some of the milk of any producer is determined not to be producer milk pursuant to this paragraph, other milk delivered by such producer as producer milk during the month will not be subject to § 1131.12(b)(5); and

(5) The delivery day requirement in paragraph (d)(1) of this section and diversion percentage in paragraph (d)(2) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before